IN THE HIGH COURT OF PUNJAB AND HARYRNA AT CHANDIGARH

C.R. No.1164 of 2005
Date of Decision:- 28.08.2006

Director Research & Medical
Education, Punjab & ors. ....Petitioners

through
Mr.G.S.Cheema, Sr.DAG, Punjab

vs.

M/s Roy Surgicals ....Respondent

through
Mr.Munish Singal, Advocate

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CORAM:-HON'BLE MR.JUSTICE SURYA KANT

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SURYA KANT, J.

This revision petition has been preferred against the order dated 13.8.2004 passed by the Civil Judge (Sr.Div.) Bathinda whereby in a suit for recovery of Rs.23,97,720/- conditional leave to defend has been granted to the petitioner-State subject to the furnishing of the bank guarantee of Rs.10 lacs within two months.

Aggrieved, the State of Punjab has preferred this revision petition.

Notice of motion was issued and in response thereto, the respondent-plaintiff has put in appearance.

Two-fold contentions are raised by Mr.Cheema, learned Sr.DAG, Punjab. It is vehemently argued that even if the averments made in the plaint are taken on their face value, no cause of action or part thereof has arisen in favour of the respondent within the territorial jurisdiction of

the Civil Court at Bathinda, which, thus, has no territorial jurisdiction to entertain the suit. Secondly, it is contended that the plea that the material supplied by the respondent-plaintiff was of sub-standard and such like contentious issue can only be adjudicated on the basis of evidence to be led by both the parties. According to Mr.Cheema, the plaintiff's claim being totally frivolous, neither it can be adjudicated in summary proceedings nor could the State be dealt with like an individual by directing to furnish a bank guarantee of Rs.10 lacs as a condition precedent.

On the other hand, learned counsel for the respondent-plaintiff while placing reliance upon a judgment of the Hon'ble Supreme Court in the case of **M/s. Mechalec Engineers & Manufacturers** vs. **M/s. Basic Equipment Corporation** AIR 1977 SC 577 and two judgments of this Court in the cases of (i)**Baljinder Singh** vs. **Jagan Nath** 2004 (2) PLR 467 and (ii) **Avtar Singh** vs. **Singh Finance** 2006 (1) PLR 687, contends that it is the absolute discretion of the Civil Court to impose a reasonable condition while granting leave to defend and, thus, no interference in the impugned order by this Court is called for.

After hearing learned counsel for the parties, I am of the considered view that so far as the first contention raised on behalf of the petitioner is concerned, it will be open for the petitioners to take a plea before the trial Court in relation to the lack of territorial jurisdiction and if any such plea is taken, the trial Court is directed to frame a specific issue and adjudicate the same in accordance with law. It is not desirable and/or expedient to express any opinion in relation to the said contention at this stage.

So far as the second contention by learned State counsel is

concerned, I find the same well merited. The trial Court appears to have proceeded on an erroneous premise as if in every suit filed under Order 37 CPC, leave to defend is to be granted conditionally. The 'summary procedure' to try a suit can be pressed into service only in respect of the classes of suits mentioned in Order 37 Rule 1 (2) C.P.C. The object of granting conditional leave to defend is to wipe out the possibility of frivolous and baseless defence pleas so that the object of providing 'summary procedure' is not hampered. This, however, does not mean that a defendant is precluded from raising a bonafide and well merited defence plea.

The conditional leave to defend can also be granted to secure and safeguard the interest of the plaintiff so that in the event of acceptance of his claim, the consequential decree is not rendered a *Brutum Fulmen.* Such like situation would not possibly arise in a case where the State or its instrumentalities are the defendants.

Keeping in view the characteristic of a 'State', it will be too imaginary to contend that if a money decree passed against the 'State' cannot be executed in accordance with the procedure provided in the CPC. The judgment passed by the Apex Court in the case of **M/s. Mechalec Engineers & Manufacturers** (supra) as well as the two judgments of this Court in **Baljinder Singh** (supra) and **Avtar Singh** (supra) cases, are, thus, totally distinguishable in view of peculiar facts and circumstances of this case.

Consequently, the revision petition is partly allowed to the extent that the impugned order dated 13.8.2004 is set aside so far as it requires the petitioners to furnish a bank guarantee of Rs.10 lacs. However,

instead of that, the petitioners are directed to give an undertaking that in case the suit filed by the respondent-plaintiff is decreed, they shall be liable to pay interest at such rate as is granted by the nationalized banks.

August 28, 2006 **(SURYA KANT)**
poonam **JUDGE**